

State of Arizona  
Senate  
Forty-sixth Legislature  
Second Regular Session  
2004

CHAPTER 175

## **SENATE BILL 1246**

AN ACT

AMENDING SECTIONS 3-363.01, 49-301, 49-302, 49-303, 49-304, 49-305, 49-306, 49-307, 49-308, 49-309 AND 49-310, ARIZONA REVISED STATUTES; RELATING TO PESTICIDE CONTAMINATION PREVENTION.

(TEXT OF BILL BEGINS ON NEXT PAGE)

1 Be it enacted by the Legislature of the State of Arizona:

2 Section 1. Section 3-363.01, Arizona Revised Statutes, is amended to  
3 read:

4 3-363.01. Reporting requirements; interagency agreement

5 A. The director OF THE ARIZONA DEPARTMENT OF AGRICULTURE may enter  
6 into an interagency agreement with the department of environmental quality  
7 to allow the director to collect the pesticide reports required pursuant to  
8 section 49-305, subsection A, ~~paragraph 1~~ B.

9 B. Rules adopted by the director pursuant to section 3-363, paragraph  
10 ~~6,~~ shall not prevent the director from collecting the pesticide reports  
11 required pursuant to section 49-305, subsection A, ~~paragraph 1~~ B as a part  
12 of any interagency agreement entered into with the department of  
13 environmental quality.

14 Sec. 2. Section 49-301, Arizona Revised Statutes, is amended to read:

15 49-301. Definitions

16 In this article, unless the context otherwise requires:

17 1. "Active ingredient" has the meaning assigned to the term by title  
18 7 United States Code section 136.

19 2. "APPLICANT" MEANS ANY PERSON WHO APPLIES FOR A REGISTRATION OR  
20 AMENDED REGISTRATION PURSUANT TO TITLE 3, CHAPTER 2, ARTICLE 5 OR A  
21 CONDITIONAL REGISTRATION PURSUANT TO SECTION 49-310.

22 ~~2.~~ 3. "Chemigation" means a method of irrigation by which a pesticide  
23 is mixed with irrigation water before the water is applied to the crop or the  
24 soil.

25 ~~3.~~ 4. "Degradation product" means a substance resulting from the  
26 transformation of a pesticide by physicochemical or biochemical means.

27 ~~4.~~ 5. "Groundwater protection data gap" means that, for a particular  
28 pesticide, the director, after study, has been unable to determine that each  
29 study required pursuant to section 49-302, subsection A has been submitted  
30 or that each study submitted pursuant to section 49-302, subsection A is  
31 valid, complete and adequate A PESTICIDE FOR AGRICULTURAL USE HAS BEEN  
32 REGISTERED WITH THE ARIZONA DEPARTMENT OF AGRICULTURE WITHOUT THE DIRECTOR  
33 OF ENVIRONMENTAL QUALITY FINDING THAT THE INFORMATION SUBMITTED PURSUANT TO  
34 SECTION 49-302 MEETS THE REQUIREMENTS OF THIS ARTICLE.

35 ~~5.~~ 6. "Henry's law constant" means an indicator of the escaping  
36 tendency of dilute solutes from water which is approximated by the ratio of  
37 the vapor pressure to the water solubility at the same temperature.

38 7. "NEW PESTICIDE" MEANS A PESTICIDE THAT CONTAINS AN ACTIVE  
39 INGREDIENT FOR WHICH THE INFORMATION REQUIRED UNDER SECTION 49-302,  
40 SUBSECTION A HAS NOT BEEN SUBMITTED BY THE APPLICANT FOR REGISTRATION AND  
41 THAT HAS NOT BEEN APPROVED BY THE DIRECTOR OF ENVIRONMENTAL QUALITY.

42 ~~6.~~ 8. "Pesticide" means any substance or mixture of substances  
43 intended to be used for defoliating plants or for preventing, destroying,  
44 repelling or mitigating insects, fungi, bacteria, weeds, rodents, predatory  
45 animals or any form of plant or animal life which is, or which the director

may declare to be, a pest which may infest or be detrimental to vegetation, humans, animals or households or be present in any environment FOR EITHER:

(a) PREVENTING, DESTROYING, REPELLING OR MITIGATING ANY PEST.

(b) USE AS A PLANT REGULATOR, DEFOLIANT OR DESICCANT.

~~7. "Pesticide registrant" means a person that has registered a pesticide pursuant to title 3, chapter 2, article 5.~~

~~8. 9. "Pollution" means the introduction into the groundwaters of this state of an active ingredient, other specified product or degradation product of an active ingredient at above a level, with an adequate margin of safety, that does not cause adverse effects on human health or safety.~~

10. "REGISTRANT" MEANS A PERSON THAT HAS REGISTERED A PESTICIDE PURSUANT TO TITLE 3, CHAPTER 2, ARTICLE 5.

~~9. 11. "Soil adsorption coefficient" means a measure of the tendency of a pesticide, or its biologically active transformation products, to bond to the surfaces of soil particles.~~

~~10. "Soil microbial zone" means the zone of the soil below which the activity of microbial species is so reduced that it has no significant effect on pesticide breakdown.~~

Sec. 3. Section 49-302, Arizona Revised Statutes, is amended to read:

49-302. Information submittal

~~A. Not later than December 1, 1987, except as provided in subsection G of this section, a person that has registered a pesticide in this state for agricultural use~~ AN APPLICANT shall submit to the director INFORMATION THAT ENABLES THE DEPARTMENT OF ENVIRONMENTAL QUALITY TO DETERMINE WHETHER A PESTICIDE HAS THE POTENTIAL TO POLLUTE THE GROUNDWATER IN THIS STATE. THIS INFORMATION SHALL INCLUDE ALL OF the following information for each active ingredient in each THE pesticide registered INTENDED FOR REGISTRATION WITH THE ARIZONA DEPARTMENT OF AGRICULTURE:

1. Water solubility.

2. Vapor pressure.

3. Octanol-water partition coefficient.

4. Soil adsorption coefficient.

5. Henry's law constant.

6. Dissipation studies, including hydrolysis, photolysis, aerobic and anaerobic soil metabolism, and field dissipation, under conditions in this state or similar environmental use conditions, if that information exists in studies and conclusions from other states or the United States government. ~~if that information does not exist, the product shall be placed on the groundwater protection list pursuant to section 49-305 and is subject to monitoring and testing under section 49-307.~~

7. The director may by rule require such additional information as THAT is required by the United States environmental protection agency for environmental fate parameters necessary to gain full registration under federal law.

1 B. The director may also require the information prescribed in  
2 subsection A of this section for other specified ingredients and degradation  
3 products of an active ingredient in any pesticide, AND ALL INFORMATION  
4 SUBMITTED SHALL COMPLY WITH SUBSECTION C. ANY STUDIES SUBMITTED PURSUANT TO  
5 THIS SUBSECTION SHALL MEET THE SAME TESTING METHODS REQUIRED FOR STUDIES  
6 CONDUCTED ON ACTIVE INGREDIENTS. THE DIRECTOR MAY ALSO REQUIRE TESTING  
7 PROTOCOLS THAT ARE SPECIFIC OR ADAPTABLE TO SOIL AND CLIMATIC CONDITIONS IN  
8 THIS STATE.

9 C. ~~All~~ Information submitted pursuant to subsection A of this section  
10 shall COMPLY WITH ALL OF THE FOLLOWING:

11 1. INFORMATION SHALL be presented in English and summarized in tabular  
12 form ~~on no more than three sheets of paper with the actual studies, including~~  
13 ~~methods and protocols, attached.~~

14 2. All information AND STUDIES, ~~at a minimum,~~ CONCERNING PRODUCT  
15 CHEMISTRY AND ENVIRONMENTAL FATE shall AT A MINIMUM meet the testing methods  
16 and reporting guidelines provided by the United States environmental  
17 protection agency pesticide assessment guidelines, subdivision D, series 60  
18 through 64 for product chemistry and subdivision N, series 161 through 164  
19 for environmental fate, including information required for degradation  
20 products in specific studies ESTABLISHED BY THE UNITED STATES ENVIRONMENTAL  
21 PROTECTION AGENCY.

22 3. With prior approval from the director, registrants APPLICANTS may  
23 use specified alternative protocols as permitted by the United States  
24 environmental protection agency guidelines if the director finds use of the  
25 protocol is consistent with and accomplishes the objectives OBJECTIVE of this  
26 article AS STATED IN SUBSECTION A.

27 4. The director may accept information, studies and conclusions from  
28 other states and the federal government if he THE DIRECTOR finds them to be  
29 derived from standard protocol procedures consistent with the criteria and  
30 objectives OBJECTIVE of this article AS STATED IN SUBSECTION A.

31 ~~D. Studies conducted on active ingredients in the formulation of~~  
32 ~~pesticides shall meet the same testing methods as required for studies~~  
33 ~~conducted on active ingredients. In addition, the director may require~~  
34 ~~specified testing protocols that are specific or adaptable to soil and~~  
35 ~~climatic conditions in this state. The director may give a pesticide~~  
36 ~~registrant an extension of up to two years if he determines that this~~  
37 ~~additional time is necessary and warranted to complete the studies required~~  
38 ~~in subsection A, paragraph 6 of this section. The deadline for these studies~~  
39 ~~shall not be extended beyond December 1, 1990. When seeking the extension,~~  
40 ~~the registrant shall submit to the director a written report on the current~~  
41 ~~status of the dissipation studies for which the extension is being sought.~~  
42 ~~For registrants granted an extension pursuant to this section, section 49-305~~  
43 ~~is effective on the completion date established by the director.~~

1       ~~E. The director may grant the registrant an extension beyond the one~~  
2 ~~authorized in subsection D of this section if all of the following conditions~~  
3 ~~are met:~~

4       ~~1. The registrant submits a written request to the director for an~~  
5 ~~extension beyond the one granted pursuant to subsection D of this section.~~  
6 ~~The request shall include the reasons why the extension is necessary and the~~  
7 ~~findings produced by the study up to the time the request is made.~~

8       ~~2. The director finds that the registrant has made every effort to~~  
9 ~~complete the studies required in subsection A, paragraph 6 of this section~~  
10 ~~within the required time limits of the extension granted pursuant to~~  
11 ~~subsection D of this section and that those studies could not be completed~~  
12 ~~within the required time limits due to circumstances beyond the control of~~  
13 ~~the registrant.~~

14       ~~3. The director establishes a final deadline, not to exceed one year~~  
15 ~~beyond the time limit of the extension granted pursuant to subsection D of~~  
16 ~~this section, and a schedule of progress by which the registrant shall~~  
17 ~~complete the studies required in subsection A, paragraph 6 of this section.~~

18       ~~F. After December 1, 1987, no registration of any new pesticide may~~  
19 ~~be granted unless the applicant submits all of the information required by~~  
20 ~~the director pursuant to this article and the director finds that the~~  
21 ~~information meets the requirements of this article.~~

22       ~~G. D. The director may, upon registration, indicate WAIVE any~~  
23 ~~information prescribed REQUIRED by subsection A of this section that need not~~  
24 ~~be provided if the director determines after at least sixty days' public~~  
25 ~~notice, and an opportunity for public comment, that either of the following~~  
26 ~~applies:~~

27       ~~1. THAT the registrant APPLICANT has demonstrated all EITHER of the~~  
28 ~~following:~~

29       ~~(a) They have made diligent and good faith efforts to timely obtain~~  
30 ~~the particular information for which a waiver is sought.~~

31       ~~(b) 1. That due to the nature of the active ingredient, it is not~~  
32 ~~scientifically possible to obtain meaningful results in the test or tests~~  
33 ~~required to obtain the particular information for which a waiver is sought.~~

34       ~~2. THAT DUE TO THE APPLICATION OR CULTURAL PRACTICES FOR THE ACTIVE~~  
35 ~~INGREDIENT, IT IS NOT NECESSARY TO OBTAIN THE PARTICULAR INFORMATION FOR~~  
36 ~~WHICH A WAIVER IS SOUGHT.~~

37       ~~(c) They have submitted alternative information that accurately~~  
38 ~~describes the relevant characteristic of the active ingredient.~~

39       ~~2. The registrant has demonstrated all of the following:~~

40       ~~(a) They have made diligent and good faith efforts to timely obtain~~  
41 ~~the particular information for which a waiver is sought.~~

42       ~~(b) They cannot timely obtain the relevant information without extreme~~  
43 ~~difficulty and hardship.~~

1       ~~(c) There is sufficient data already submitted to determine whether~~  
2 ~~the active ingredient will be on or off the groundwater protection list~~  
3 ~~established by section 49-305 regardless of what the waived information might~~  
4 ~~show.~~

5       ~~(d) They have committed to submittal of the relevant information~~  
6 ~~within three years after the requirement has been waived. A waiver shall not~~  
7 ~~be available under this subdivision for a new pesticide registration.~~

8       E. ON APPROVAL OF THE DIRECTOR, AN APPLICANT MAY SUBMIT ALTERNATIVE  
9 INFORMATION TO SATISFY A DATA REQUIREMENT OF SUBSECTION A. THIS ALTERNATIVE  
10 INFORMATION SHALL ACCURATELY DESCRIBE THE RELEVANT DATA REQUIREMENT FOR EACH  
11 ACTIVE INGREDIENT OF THE PESTICIDE UNDER CONDITIONS IN THIS STATE OR UNDER  
12 SIMILAR ENVIRONMENTAL USE CONDITIONS.

13       H. F. Information requirements that the director determines need not  
14 be provided WAIVES PURSUANT TO SUBSECTION D shall not be considered  
15 CONSTITUTE a groundwater protection data gap.

16       Sec. 4. Section 49-303, Arizona Revised Statutes, is amended to read:

17       49-303. Pesticide evaluation process; reporting requirements

18       A. AFTER SATISFYING THE REQUIREMENTS OF SECTION 49-302, A REGISTRANT  
19 MAY USE ANY OF THE FOLLOWING PROCESSES TO DEMONSTRATE TO THE DIRECTOR WHETHER  
20 THE PESTICIDE HAS THE POTENTIAL TO POLLUTE GROUNDWATER:

21       1. ~~The director of environmental quality in consultation with the~~  
22 ~~Arizona department of agriculture and the department of water resources shall~~  
23 ~~establish~~ USE OF specific numeric values ESTABLISHED BY THE DIRECTOR for  
24 pesticides regarding water solubility, soil adsorption coefficient,  
25 hydrolysis, aerobic and anaerobic soil metabolism and field dissipation. The  
26 director OF ENVIRONMENTAL QUALITY in consultation with the Arizona department  
27 of agriculture and the department of water resources may revise the numeric  
28 values if the director OF ENVIRONMENTAL QUALITY finds that the revision is  
29 necessary to protect the groundwater of this state. The numeric values  
30 established or as revised shall always be at least as stringent as the values  
31 being used by the United States environmental protection agency at the time  
32 the values are established or revised.

33       2. IF ADOPTED IN RULE, USE OF A PROCEDURE FOR ESTABLISHING SPECIFIC  
34 NUMERIC VALUES OTHER THAN THOSE ESTABLISHED PURSUANT TO PARAGRAPH 1 OF THIS  
35 SUBSECTION. ANY NUMERIC VALUES ADOPTED BY THE DIRECTOR OF ENVIRONMENTAL  
36 QUALITY PURSUANT TO THIS PARAGRAPH SHALL BE AT LEAST AS STRINGENT AS THE  
37 NUMERIC VALUES USED BY THE UNITED STATES ENVIRONMENTAL PROTECTION AGENCY.

38       3. IF ADOPTED IN RULE, USE OF AN ALTERNATE PROCEDURE OTHER THAN THE  
39 USE OF SPECIFIC NUMERIC VALUES TO EVALUATE THE POTENTIAL OF A PESTICIDE TO  
40 POLLUTE GROUNDWATER. THIS PROCEDURE SHALL BE CONSISTENT WITH THE OBJECTIVE  
41 OF THIS ARTICLE.

42       B. IN CONSULTATION WITH THE ARIZONA DEPARTMENT OF AGRICULTURE AND THE  
43 DEPARTMENT OF WATER RESOURCES, THE DIRECTOR OF ENVIRONMENTAL QUALITY SHALL  
44 ADOPT RULES NECESSARY TO IMPLEMENT THIS SECTION.

1        ~~B.~~ C. The director shall report on December 1 of each year the  
2 following information to the legislature for each pesticide registered for  
3 agricultural use:

4        1. A list of each active ingredient, other specified ingredient or  
5 degradation product of an active ingredient of a pesticide for which there  
6 is a groundwater protection data gap.

7        2. A list of each pesticide that contains an active ingredient, any  
8 other specified ingredient or a degradation product of an active ingredient  
9 which is greater than one or more of the numeric values established pursuant  
10 to subsection A OF THIS SECTION, or is less than the numeric value in the  
11 case of soil adsorption coefficient, in both of the following categories:

12        (a) Water solubility or soil adsorption coefficient.

13        (b) Hydrolysis, aerobic soil metabolism, anaerobic soil metabolism or  
14 field dissipation.

15        3. A LIST OF EACH PESTICIDE THAT CONTAINS AN ACTIVE INGREDIENT, ANY  
16 OTHER SPECIFIED INGREDIENT OR A DEGRADATION PRODUCT OF AN ACTIVE INGREDIENT  
17 THAT HAS BEEN DETERMINED BY AN ALTERNATE PROCEDURE THAT IS ADOPTED PURSUANT  
18 TO SUBSECTION B OF THIS SECTION TO HAVE THE POTENTIAL TO POLLUTE GROUNDWATER.

19        ~~3.~~ 4. For each pesticide listed pursuant to paragraph 2 OR 3 OF THIS  
20 SUBSECTION for which information is available, a list of the amount sold OF  
21 THE PESTICIDE THAT WAS APPLIED TO SOIL in this state during the most recent  
22 year, for which sales information is available and where IT WAS APPLIED and  
23 for what purpose the pesticide was used.

24        ~~C.~~ D. The director of environmental quality in consultation with the  
25 Arizona department of agriculture, the department of water resources and the  
26 department of health services shall MAY determine to the extent possible the  
27 toxicological significance of the degradation products and other specified  
28 ingredients identified pursuant to subsection ~~B~~ C, paragraph PARAGRAPHS 2  
29 AND 3 OF THIS SECTION.

30        ~~D.~~ The director of environmental quality in consultation with the  
31 Arizona department of agriculture and the department of water resources may,  
32 after a public hearing, adopt by rule a procedure for establishing specific  
33 numeric values other than the procedure prescribed by subsection A. Any  
34 numeric values adopted by the director as prescribed by this subsection shall  
35 be at least as stringent as the numeric values being used by the United  
36 States environmental protection agency at the time the director adopts or  
37 revises those numeric values.

38        Sec. 5. Section 49-304, Arizona Revised Statutes, is amended to read:

39        49-304. Penalty for groundwater protection data gap

40        A. A registrant of a pesticide identified in section 49-303,  
41 subsection ~~B~~, paragraph ~~1~~ is subject to a penalty of up to ten thousand  
42 dollars for each day the THAT A groundwater protection data gap exists UNLESS  
43 THE INFORMATION WAS WAIVED PURSUANT TO SECTION 49-302, SUBSECTION D OR A  
44 CONDITIONAL REGISTRATION WAS GRANTED PURSUANT TO SECTION 49-310. In  
45 determining the amount of the penalty, the following shall be considered:

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B. If there is a dispute between the director and a registrant regarding the existence of a groundwater protection data gap, the director or registrant shall submit the issues of the dispute to the water quality appeals board pursuant to section 49-323. The water quality appeals board shall review the evidence submitted by the registrant and the director and make recommendations to the director on whether or not the groundwater protection data gap exists.

D. C. The attorney general may enforce this section.

Sec. 6. Section 49-305, Arizona Revised Statutes, is amended to read:  
49-305. Groundwater protection list; regulation of pesticides

A. The director shall establish by rule a groundwater protection list of pesticides that have the potential to pollute groundwater. The director shall immediately place all pesticides identified in section 49-303, subsection 8-C, paragraph PARAGRAPHS 2 AND 3 on the groundwater protection list and shall regulate the use of these pesticides if the pesticide is used to be applied to or injected FOR APPLICATION TO OR INJECTION into the soil by ground based application equipment or by chemigation, or the label of the pesticide requires or recommends that the application be completed within seventy-two hours by flood or furrow irrigation. The director shall adopt rules to carry out this section. The rules shall include the following:

~~2. Dealers of pesticides shall make quarterly reports to the director of all sales of pesticides that are on the groundwater protection list. These reports shall include lists of all sales by purchases.~~



1        ~~B. C. If the A pesticide has not been detected in groundwater~~  
2 ~~anywhere in the United States THIS STATE in tests conducted by a governmental~~  
3 ~~agency or other reliable source, the director may, by rule, remove pesticides~~  
4 ~~THAT PESTICIDE from the groundwater protection list if either of the~~  
5 ~~following applies AS PROVIDED IN RULE. :-~~

6        ~~1. The numeric values have been amended so that the pesticide fails~~  
7 ~~to meet the criteria established in section 49-303, subsection B,~~  
8 ~~paragraph 2.~~

9        ~~2. The pesticide does not qualify for inclusion on the groundwater~~  
10 ~~protection list based on numeric values adopted by the director pursuant to~~  
11 ~~section 49-303, subsection D.~~

12        Sec. 7. Section 49-306, Arizona Revised Statutes, is amended to read:

13        49-306. Groundwater protection data gap; cancellation of  
14 registration

15        A. The director shall notify the chemicals division of the Arizona  
16 department of agriculture to not register or to cancel the registration of  
17 a pesticide intended FOR AGRICULTURAL USE:-

18        ~~1. To be applied to or injected into the ground by ground based~~  
19 ~~application equipment or by chemigation after December 1, 1989 if there is~~  
20 ~~a groundwater protection data gap for that pesticide, unless the registrant~~  
21 ~~has been granted a current extension pursuant to section 49-302.~~

22        ~~2. For use with other than ground based application equipment after~~  
23 ~~December 1, 1990 if there is a groundwater protection data gap for that~~  
24 ~~pesticide, unless the registrant has been granted a current extension~~  
25 ~~pursuant to section 49-302.~~

26        ~~B. If a registrant does not comply with the information requirements~~  
27 ~~of section 49-302, the director shall file the information requirements of~~  
28 ~~section 49-302 according to procedures provided in 7 United States Code~~  
29 ~~section 136A, subsection C, paragraph 2, subparagraph B. In order to carry~~  
30 ~~out this section, the director has the same authority to require information~~  
31 ~~from registrants of active pesticide ingredients that the administrator of~~  
32 ~~the United States environmental protection agency has pursuant to 7 United~~  
33 ~~States Code section 136A, subsection C, paragraph 2, subparagraph B. The~~  
34 ~~director shall prescribe by rule procedures for resolving disputes or funding~~  
35 ~~the filing of the information requirements of section 49-302. The procedures~~  
36 ~~may include mediation and arbitration. The arbitration procedures, insofar~~  
37 ~~as practicable, shall be consistent with applicable federal law or otherwise~~  
38 ~~comply with the commercial arbitration rules established by the American~~  
39 ~~arbitration association. The procedures shall be established so as to~~  
40 ~~resolve any dispute with the timetable established in section 49-302.~~

41        ~~C. For an active ingredient or pesticide for which a registrant or~~  
42 ~~registrants do not provide the information required pursuant to section~~  
43 ~~49-302, the director may determine the active ingredient or pesticide to be~~  
44 ~~critical to agricultural production and the director may utilize assessments~~  
45 ~~charged to those registrants of the active ingredient for which the~~

1 ~~information is required pursuant to section 49-302 in amounts necessary to~~  
2 ~~cover the director's expenses in obtaining the information. The director may~~  
3 ~~also request an appropriation to be used in combination with assessments to~~  
4 ~~obtain the required information.~~

5 ~~D. B. If a registrant no longer manufactures the active ingredient~~  
6 ~~or pesticide in question or if it has been voluntarily withdrawn from the~~  
7 ~~Arizona market, the registration of that product shall be cancelled and~~  
8 ~~subsections B and C of this section do not apply with respect to that~~  
9 ~~product.~~

10 Sec. 8. Section 49-307, Arizona Revised Statutes, is amended to read:

11 49-307. Monitoring and testing

12 A. In order to more accurately determine the mobility and persistence  
13 of the pesticides identified pursuant to section 49-303, subsection B- C,  
14 paragraph PARAGRAPHS 2 AND 3 and those pesticides whose continued use is  
15 allowed pursuant to section 49-309 and to determine if these pesticides have  
16 migrated into groundwaters of this state, the director shall conduct soil and  
17 groundwater monitoring statewide in areas of this state where the pesticide  
18 is primarily used or where other factors identified pursuant to section  
19 49-302, including physicochemical characteristics and use practices of  
20 pesticides, indicate a probability that the pesticide may migrate into the  
21 groundwaters of this state. The monitoring shall begin within one year after  
22 the pesticide is placed on the groundwater protection list and shall be  
23 conducted according to standard protocol and testing procedures established  
24 pursuant to subsection B of this section. Monitoring programs shall replicate  
25 conditions under which the pesticide is normally used in the area of  
26 monitoring. In developing a monitoring program, the director shall  
27 coordinate his activities with other agencies that conduct soil and  
28 groundwater monitoring.

29 B. Within ninety days after a pesticide is placed on the groundwater  
30 protection list pursuant to section 49-305, the director, IN CONSULTATION  
31 WITH THE DEPARTMENT OF HEALTH SERVICES, shall expeditiously develop a  
32 standard protocol and testing procedure for each pesticide identified  
33 pursuant to section 49-305.

34 C. The director shall determine the probable source of the pesticides,  
35 SPECIFIED INGREDIENTS or degradation products. The analysis of the  
36 pesticides, SPECIFIED INGREDIENTS or degradation products shall consider  
37 factors such as the physical and chemical characteristics of the pesticide,  
38 volume of use and method of applying the pesticide, irrigation practices  
39 related to use of the pesticide and types of soil in areas where the  
40 pesticide is applied.

41 D. The director shall report all monitoring results to the Arizona  
42 department of agriculture.

1       Sec. 9. Section 49-308, Arizona Revised Statutes, is amended to read:  
2       49-308. Enforcement

3       A. Within ninety days after a pesticide that is listed pursuant to  
4 section 49-305, ~~subsection A~~ is found pursuant to section 49-307 under any  
5 of the conditions listed in paragraph 1, 2 or 3 of this subsection, the  
6 director shall determine whether the pesticide resulted from agricultural use  
7 according to state and federal laws and regulations and shall state in  
8 writing the reasons for the determination that:

9       1. An active ingredient of a pesticide has been found at or below the  
10 deepest of the following depths:

11       (a) Eight feet below the soil surface.

12       (b) Below the root zone of the crop where the active ingredient was  
13 found.

14       ~~(c) Below the soil microbial zone.~~

15       2. An active ingredient of a pesticide has been found in the  
16 groundwaters of this state.

17       3. The pesticide has degradation products or other specified  
18 ingredients which pose a threat to public health and which have been found  
19 under the conditions specified for active ingredients in either paragraph 1  
20 or 2 of this subsection.

21       B. On a determination by the director that a pesticide meets any of  
22 the conditions specified in subsection A of this section as a result of  
23 agricultural use according to state and federal laws and regulations, the  
24 director shall immediately notify the registrant of the determination. A  
25 pesticide that meets any of the conditions in subsection A of this section  
26 is subject to section 49-309.

27       C. For the purposes of this section, any finding of a pesticide shall  
28 result from an analytical method approved by the United States environmental  
29 protection agency and shall be verified, within thirty days, by a second  
30 analytical laboratory approved by the director.

31       D. The point of compliance prescribed by section 49-244 does not apply  
32 to this section.

33       Sec. 10. Section 49-309, Arizona Revised Statutes, is amended to read:

34       49-309. Cancellation of pesticide registration; hearing for  
35       reconsideration and continued use

36       A. If the director determines the pesticide which meets any of the  
37 conditions specified in section 49-308 is carcinogenic, mutagenic,  
38 teratogenic or toxic to humans in concentrations found at depths prescribed  
39 in section 49-308, subsection A and the pesticide label cannot be modified  
40 to change the approved use and application of the active ingredient to ensure  
41 that it does not threaten to pollute the groundwaters of this state, the  
42 director shall notify ~~the chemicals division of the Arizona department of~~  
43 agriculture to cancel the registration of the pesticide.

1 B. For any other pesticide which meets any of the conditions specified  
2 in section 49-308 the registrant may request a hearing within forty-five days  
3 of notification that the director has made a determination pursuant to  
4 section 49-308, subsection B. At the same time the registrant shall submit  
5 a report and documented evidence which demonstrates either of the following:

6 1. The presence in the soil of any active ingredient, other specified  
7 ingredient or degradation product does not threaten to pollute the  
8 groundwaters of this state in any region in this state or that the pesticide  
9 label can be modified to change the approved use and application of the  
10 active ingredient to ensure that it does not threaten to pollute the  
11 groundwaters of this state.

12 2. Any active ingredient, other specified ingredient or degradation  
13 product that has been found in groundwater has not polluted, and does not  
14 threaten to pollute, the groundwater of this state in any region in this  
15 state in which the pesticide may be used according to the terms under which  
16 it is registered OR THAT THE PESTICIDE LABEL CAN BE MODIFIED TO CHANGE THE  
17 APPROVED USE AND APPLICATION OF THE ACTIVE INGREDIENT TO ENSURE THAT IT DOES  
18 NOT THREATEN TO POLLUTE THE GROUNDWATER OF THIS STATE.

19 C. The director of environmental quality, after a public hearing and  
20 in consultation with the director of water resources, the director of the  
21 department of health services and the director of the Arizona department of  
22 agriculture, may allow the continued registration, sale and use of a  
23 pesticide, other than those identified in subsection A of this section, which  
24 meets any of the conditions specified in section 49-308 if the director  
25 determines any of the following:

26 1. Either of the conditions prescribed in subsection B of this section  
27 exist and apply to the pesticide.

28 2. There are no alternative products or practices that can be  
29 effectively used in substitution for the pesticide and the cancellation or  
30 modification will cause severe economic hardship on one or more segments of  
31 the agricultural industry in this state.

32 D. Notwithstanding subsection C of this section, the director shall  
33 not allow the continued registration, sale or use of a pesticide if it would  
34 cause a violation of water quality standards at the applicable point of  
35 compliance.

36 E. ~~The chemicals division of the~~ Arizona department of agriculture  
37 shall cancel the registration of any pesticide identified pursuant to section  
38 49-308 unless continued under subsection C of this section.

39 Sec. 11. Section 49-310, Arizona Revised Statutes, is amended to read:

40 49-310. Pesticides; conditional registration; reports

41 A. The director may provide for the conditional registration of a NEW  
42 pesticide for one year with an option to renew annually for a period not to  
43 exceed three years under the following conditions:

1           1. The NEW pesticide is registered pursuant to the federal  
2 insecticide, fungicide and rodenticide act as amended (7 United States Code  
3 section 136; P.L. 100-532; 102 Stat. 2654) and is registered for use in ONE  
4 OR MORE other states.

5           2. The director determines that a conditional registration will result  
6 in use of the NEW pesticide in this state that is sufficient to generate  
7 acceptable data to complete the permanent registration of the NEW pesticide  
8 pursuant to section 49-302. ~~A person~~ AN APPLICANT who submits data shall  
9 commit to develop and generate new data for the department's review and  
10 approval. The new data shall address the deficiency previously identified  
11 by the department in its initial review and approval process. The commitment  
12 shall be in the form of a contract with the department.

13           3. The NEW pesticide in question shall be important to agriculture as  
14 determined by the director OF ENVIRONMENTAL QUALITY after consultation with  
15 the Arizona department of agriculture.

16           B. Each registrant who holds a conditional registration shall submit  
17 a report to the director annually as specified by the director that describes  
18 the progress made in developing each item of required data. The director may  
19 require that additional data be included in THE reports ~~on conditionally~~  
20 ~~registered pesticides~~.

21           C. On receipt of the prescribed reports, the director may determine  
22 that the conditional registration status be continued for an additional year  
23 or be canceled if the reports indicate a lack of progress. If the  
24 conditional registration is canceled, all product in the state, including  
25 product at the user level, shall be removed from sale or distribution.

26           D. Conditional registration shall NOT be granted MORE THAN one time  
27 per pesticide active ingredient.

28           E. Conditional registrants shall not voluntarily cancel the  
29 conditional registration.

30           Sec. 12. Rule making for alternate pesticide evaluation process

31           On or before July 1, 2005, the department of environmental quality  
32 shall adopt in rule an alternate procedure pursuant to section 49-303,  
33 subsection A, paragraph 3, Arizona Revised Statutes, as amended by this act,  
34 to evaluate without the use of specific numeric values, the potential of a  
35 pesticide to pollute groundwater.

36           Sec. 13. Review of pesticide pollution prevention evaluation  
37 process; report

38           A. On or before July 1, 2008, the department of environmental quality  
39 shall prepare a report that evaluates the effectiveness of methods used by  
40 the department to determine the potential of a pesticide to pollute  
41 groundwater. The report shall be submitted to the speaker of the house of  
42 representatives and the president of the senate and shall at a minimum  
43 include the following:

- 1           1. An assessment of the validity and accuracy of the results generated
- 2 by the methods used by the department to determine the potential for a
- 3 pesticide to pollute groundwater.
- 4           2. Groundwater monitoring data to support the conclusions.
- 5           3. A description of changes needed to make the program more effective,
- 6 including changes in statutes, rules and programs.
- 7           B. Based on the evaluation and report, if the department determines
- 8 that an alternate procedure is more predictive than specific numeric values
- 9 at determining the risk to groundwater caused by pesticides, the department
- 10 shall recommend statutory and rule changes regarding the use of the most
- 11 predictive method to evaluate the potential of pesticides to pollute the
- 12 groundwater of this state.

APPROVED BY THE GOVERNOR APRIL 27, 2004.

FILED IN THE OFFICE OF THE SECRETARY OF STATE APRIL 27, 2004.

Passed the House April 19, 20 04,

by the following vote: 56 Ayes,

0 Nays, 4 Not Voting

Jake Flake  
Speaker of the House  
Norman L. Moore  
Chief Clerk of the House

Passed the Senate February 23, 20 04,

by the following vote: 29 Ayes,

0 Nays, 1 Not Voting

John Blumett  
President of the Senate  
Chambers B. Blumett  
Secretary of the Senate

**EXECUTIVE DEPARTMENT OF ARIZONA  
OFFICE OF GOVERNOR**

This Bill was received by the Governor this

\_\_\_\_\_ day of \_\_\_\_\_, 20\_\_\_\_,

at \_\_\_\_\_ o'clock \_\_\_\_\_ M.

\_\_\_\_\_  
Secretary to the Governor

Approved this \_\_\_\_\_ day of

\_\_\_\_\_, 20\_\_\_\_,

at \_\_\_\_\_ o'clock \_\_\_\_\_ M.

\_\_\_\_\_  
Governor of Arizona

S.B. 1246

**EXECUTIVE DEPARTMENT OF ARIZONA  
OFFICE OF SECRETARY OF STATE**

This Bill was received by the Secretary of State

this \_\_\_\_\_ day of \_\_\_\_\_, 20\_\_\_\_,

at \_\_\_\_\_ o'clock \_\_\_\_\_ M.

\_\_\_\_\_  
Secretary of State

SENATE CONCURS IN HOUSE AMENDMENTS  
AND FINAL PASSAGE

Passed the Senate April 22, 2004,

by the following vote: 29 Ayes,

0 Nays, 1 Not Voting

Klu Blumett  
President of the Senate  
Chambers Ballinger  
Secretary of the Senate

EXECUTIVE DEPARTMENT OF ARIZONA  
OFFICE OF GOVERNOR

This Bill was received by the Governor this

22nd day of April, 2004,

at 3:22 o'clock P. M.

Wendy Ibarra  
Secretary to the Governor

Approved this 27 day of

April, 2004,

at 2:30 o'clock P. M.

J. T. Nagle  
Governor of Arizona

S.B. 1246

EXECUTIVE DEPARTMENT OF ARIZONA  
OFFICE OF SECRETARY OF STATE

This Bill was received by the Secretary of State

this 27 day of April, 2004,

at 4:18 o'clock P. M.

Janice K. Brewer  
Secretary of State